



October 1, 1999

Ms. J. Middlebrooks
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
501 Police & Courts Bldg.
Dallas, Texas 75201

OR99-2797

Dear Ms. Middlebrooks:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 128020.


The City of Dallas Police Department (the "department") received a request for the arrest warrant affidavit for an aggravated sexual assault case. You ask whether the name of the sexual assault victim is excepted from disclosure under section 552.101 of the Government Code. You have released all other information. We have considered the exception you claim and reviewed the submitted information.

The arrest warrant affidavit appears to be a document that has been filed with a court. Information filed with a court is generally a matter of public record and may not be withheld from disclosure. *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992). In *Star-Telegram, Inc.*, the sexual assault victim's name became part of the public record because it was used in the indictment, motion in limine, and the charge to the jury. Thus, the court held that a trial court may not prohibit a newspaper from disclosing the victim's true identity when the information was obtained from the public record. *Id.* at 58. Accordingly, if the affidavit is filed with a court, then the department may not withhold the victim's name under section 552.101 because the sexual assault victim's name is used in the arrest warrant affidavit, which is a public record.

If the affidavit has not been filed with a court, then you must redact the sexual assault victim's name because it is protected by common-law privacy which is encompassed in section 552.101. For information to be protected from public disclosure by the common-law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Foundation v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685. Information tending to identify the sexual assault victim is private information. *See* Open Records Decision No. 393 (1983).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/nc

Ref.: ID# 128020

Encl. Submitted documents

cc: Mr. Dave Michaels
Staff Writer
The Dallas Morning News
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(w/o enclosures)